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March 5, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Northeast Rural Services, Inc.: Petition for Extension of Time and/or Waiver of ETC
Designation Deadline For Rural Broadband Experiments
WC Docket No. 10-90, WC Docket No. 14-259

Dear Ms. Dortch:

On behalf of Northeast Rural Services, Inc. (NRS) respectfully submits the subject Petition for Extension of Time and/or Waiver. NRS seeks an extension of time and/or waiver of the deadline established in the above proceeding to notify the Wireline Competition Bureau of eligible telecommunications carrier status.

Please direct inquiries regarding the NRS Petition for Extension of Time and/or Waiver to the undersigned counsel for NRS.

Sincerely,

/s/ Michael T. Torrone

Michael T. Torrone
For the Firm

MTT/mg
Enclosures

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cc: Ian Forbes, Telecommunications Access Policy Division
Alexander Minard, Telecommunications Access Policy Division

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Broadband Experiments)	WC Docket No. 14-259

EMERGENCY REQUEST FOR EXPEDIATED TREATMENT

**PETITION OF NORTHEAST RURAL SERVICES, INC. FOR EXTENSION OF TIME
AND/OR WAIVER OF ETC DESIGNATION DEADLINE
FOR RURAL BROADBAND EXPERIMENTS**

COMES NOW, Northeast Rural Services, Inc. (NRS), an Oklahoma for-profit corporation and provisionally selected bidder under rural broadband experiments (RBE), pursuant to 47 C.F.R § 1.3 and for purposes of NRS Project IDs 8 & 10, respectfully requests the Federal Communications Commission (Commission): (a) extend the March 5, 2015 deadline to submit appropriate documentation of eligible telecommunications carrier (ETC) designation for census blocks within rural telephone company study areas; and/or (b) waive said deadline with regard to census blocks encompassed within said areas. NRS's requested relief is consistent with the public interest.

I. POST-SELECTION REVIEW PROCESS COMPLIANCE

1. The Commission's December 5, 2014 Public Notice¹ identified NRS as an entity provisionally selected for RBE support. NRS's total requested support of \$1,029,274.00 is

¹ *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, FCC Public Notice DA-14-1772 (Dec. 5, 2014) ("Public Notice").

comprised of six (6) selected project bids (Project IDs 1, 4, 6, 8, 10, & 12) which, if combined, cover 107 census blocks.²

2. In accordance with RBE post-selection review³ and Form 5620 Filing Instructions (Filing Instructions),⁴ NRS has timely submitted the requisite Audited Financial Statements, Technology Description, and Letter of Credit Commitment Letter.

3. On March 5, 2015, NRS timely submitted appropriate documentation⁵ (e.g. original designation order issued by the Oklahoma Corporation Commission (OCC)) of its ETC designation throughout specifically identified Southwestern Bell Telephone Company d/b/a AT&T Oklahoma (AT&T) exchanges along with the appropriate certification in accordance with post-selection review criteria. See Exhibit A attached hereto. The *ETC Order* granting NRS's requested relief throughout the AT&T exchanges evinces ETC designation within all census blocks covered by Project IDs 1, 4, 6, & 12. Section 2(C) of the Filing Instructions requires that a *separate* ETC designation attachment be provided for selected project bids, and thus, NRS has complied with the post-selection review process for Project IDs 1, 4, 6, & 12.

4. As set forth in detail below, special and uncontrollable circumstances concerning NRS's attempts to obtain ETC designation in rural telephone company study areas will prevent NRS from submitting appropriate ETC documentation for Project IDs 8 & 10 by the March 5, 2015 deadline. For the following reasons, NRS respectfully requests the Commission grant the relief requested herein as the same is in the public interest and consistent with the *RBE Order*.

² Attachment "A" to Public Notice.

³ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8787-88, para. 54 (2014) (*RBE Order*).

⁴ Attachment "B" to Public Notice.

⁵ *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause Number PUD 201400359, Order Number 637332, Final Order Designating Northeast Rural Services, Inc. as an Eligible Telecommunications Carrier (Mar. 4, 2015) filed with the Oklahoma Corporation Commission (*ETC Order*).

II. PROCEDURAL BACKGROUND

5. At the time NRS submitted formal proposals for funding through the RBE it was not designated as an ETC.

6. Immediately upon issuance of the December 5, 2014 Public Notice, NRS diligently expended time and resources in preparing its Application for Designation as an ETC (Application) for filing with the OCC.

7. During preparations, NRS confronted difficulty in determining the specific price cap exchange boundaries and identifying specific exchanges, and/or study areas wherein census blocks covered by selected project bids were located. Moreover, NRS was unable to locate the Commission's online maps of price cap areas containing exchange boundaries and NRS could not definitively determine from available data which exchange or study area contained certain census blocks and whether the incumbent serving each census block was a price cap carrier or rate-of-return carrier.⁶ Further, the OCC's online materials likewise were devoid of information relative to said determination.

8. On December 18, 2014, staff of the OCC Public Utility Division (PUD) contacted NRS's legal counsel, unsolicited, to discuss the Commission's provisional selection of NRS under the RBE. PUD conveyed the OCC's procedure for ETC designation and indicated that PUD understood the urgency associated with satisfying post-selection review criteria. Following this conference, NRS was optimistic about meeting the March 5, 2015 ETC deadline.

9. In continuance of its good faith efforts, NRS filed the Application requesting ETC designation throughout various AT&T exchanges on December 19, 2015.⁷ These exchanges

⁶ Notably, the "FAQs for Rural Broadband Experiments" under Section IV (D) states a study area boundary map on the Commission's website can be consulted to determine a rate-of-return carrier's service area, but the link provided (<http://apps.fcc.gov/web/sadata/>) brings a user to a window stating that the webpage is unavailable.

⁷ See OCC Cause Number PUD 201400359 ("ETC Cause").

contain all census blocks covered by Project IDs 1, 4, 6, & 12 and a portion of the covered census blocks in Project IDs 8 & 10.

10. Subsequently, NRS engaged an engineering firm to review any available exchange and/or study area boundaries, maps, and the Commission's census block information to determine the service or study areas containing remaining census blocks covered by Project IDs 8 & 10. Maps reviewed were not discernible in relation to the census blocks. The engineers attempted to utilize mapping software to overlay the relevant blocks in order to identify the study areas or exchanges for which NRS may be required to seek ETC designation. Following mapping analysis, it appeared covered census blocks may be served, at least in part if not entirely, by either Chouteau Telephone Company, d/b/a FairPoint Communications (Chouteau) or CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink (CenturyTel). Chouteau and CenturyTel are both rural telephone companies as defined in 47 U.S.C. § 153(44).

11. After conferring with CenturyTel's attorney, NRS learned that CenturyTel would not be opposing or participating in the ETC Cause.

12. On or about January 28, 2015, NRS contacted Chouteau's counsel to definitively determine whether the rural telephone company was price cap or rate-of-return regulated. Unforeseen by NRS, Chouteau's counsel indicated it was a "hybrid" in relation to said regulation. Chouteau is a price cap carrier for purposes of federal universal services support, but is rate-of-return in relation to other aspects of its service provision. After discussing potential inclusion of Chouteau's study area in the ETC Cause, Chouteau's counsel indicated there was no intent to cause unnecessary delay and was already aware of the RBE March 5, 2015 ETC designation deadline. Chouteau's counsel did address the public interest component associated

with ETC designation in rural telephone company study areas when recommending NRS confer with the Commission regarding removal of supported census blocks located in said areas.

13. In reviewing Commission reports, orders, and materials, ambiguity seemed apparent relative to the *RBE Order* and a situation involving a “hybrid” regulated service provider such as Chouteau.⁸

14. In light of NRS’s engineer’s mapping analysis and lack of clarity concerning the effect of Chouteau’s “hybrid” regulation, NRS supplemented its Application on January 29, 2015, to include Chouteau and CenturyTel areas within the ETC designation request. Through such course of action, NRS continued good faith efforts to obtain ETC designation.⁹

15. Upon filing the January 29, 2015 Amendment to Application, NRS and PUD discussed a motion for procedural schedule intended to set the final ETC hearing prior to March 5, 2015.

16. On February 2, 2015 NRS conferred with Chouteau regarding the motion for procedural schedule (containing the aforesaid final hearing date) and requested an agreement as to specially setting a hearing on the motion. Prior to receiving Chouteau’s response, PUD contacted NRS to discuss the proposed schedule and *agreed on February 27, 2015* as the final hearing date to be included in the procedural schedule motion. In addition, NRS was advised to promptly commence drafting a *proposed final order granting ETC designation* and to distribute the order to the parties for review.

17. However, on February 9, 2015, Chouteau informed NRS it was unable to agree to the proposed procedural schedule at the February 12, 2015 motion docket. Chouteau also

⁸ See generally *RBE Order*, 29 FCC rcd at 8778, para. 17 and FN 43.

⁹ See *Amendment to Application* filed in Cause Number PUD 201400359, Oklahoma Corporation Commission, and *Second Amendment to Application* (merely clarifying designation request relative to Chouteau’s service area) filed in Cause Number PUD 201400359, Oklahoma Corporation Commission.

informed NRS it would be participating in the ETC Cause, and was reviewing all potential issues/concerns which required more time than was built into the procedural schedule(s). Chouteau's current position on the proposed schedule did not appear to validate the earlier assertion regarding lack of intent to unduly delay the ETC Cause.

18. On February 11, 2014, NRS was surprised to learn PUD was no longer agreeing to the dates proposed in the motion for procedural schedule. PUD's position was contrary to its prior agreement regarding the applicable motion as it had offered February 27, 2015 at 9:30 a.m. as the date/time for final hearing. As to the reason for this unexpected opposition, PUD alluded to the requirement that it find an ETC designation affecting rural telephone company study areas (i.e. Chouteau and CenturyTel) serves the public interest. NRS inquired as to the justification for the PUD's altered position as it pertained to ETC designation in CenturyTel's study area. Explanation was merited as CenturyTel's counsel stated two weeks prior it would neither *oppose* nor *participate* in the ETC cause. Per PUD, the public interest finding takes considerable time and it was not proper to expedite the process for NRS.

19. Based on the opposition to the proposed procedural schedule, it became apparent NRS was extremely unlikely to obtain ETC designation in the Chouteau and CenturyTel areas prior to the March 5, 2015 deadline. However, the OCC indicated the initial procedural schedule, with the a final hearing to be held on February 27, 2015, would be acceptable if NRS were to remove study areas of Chouteau and CenturyTel from relief sought in the ETC Cause. Likewise, Chouteau stated it would agree to withdraw its Entry of Appearance and refrain from further intervention upon dismissal of the proceedings as to Chouteau (without prejudice to expeditiously re-filing) and removal of its study area therefrom.

20. Considering the subject deadline, NRS's options were either: (a) proceed with the Application, as amended, and likely file a petition for an extension of time and/or waiver and for completing ETC designation for *all* selected project bids; or (b) attempt efforts to dramatically increase the possibility of satisfying the ETC designation criteria for Project IDs 1, 4, 6, & 12 through dismissal of proceedings as to Chouteau and CenturyTel, promptly re-filing the same application for ETC designation throughout said companies' study areas, and petitioning the Commission for an extension of time and/or waiver of the March 5, 2015 deadline for Project IDs 8 & 10.

21. NRS elected to proceed under option (b) as the same presented the greatest possibility of serving the public interest and furthering the collective goal of advancing the deployment of voice and broadband capable networks in rural, high-cost and extremely high-cost areas.

22. Following dismissal and study area removal of the rural telephone companies in the ETC Cause, NRS promptly re-filed separate applications seeking ETC designation in Chouteau and CenturyTel study areas, respectively.¹⁰ See Exhibits B & C attached hereto.

23. On February 27, 2015, the final hearing was held in the ETC Cause. Following the hearing the OCC issued the *ETC Order* designating NRS as an ETC throughout the AT&T exchanges identified in the Application. In the *ETC Order*, testimony on behalf of PUD opined that "because NRS will use the anticipated federal funds to increase and establish the availability of broadband telecommunications services in rural, high-cost price cap areas, which furthers

¹⁰ See *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause Number PUD 201500079 filed with the OCC on February 20, 2015; and *Application of Northeast Rural Services, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause Number PUD 201500081 filed with the OCC on February 20, 2015 (the purpose for two separate filings contemplates the potential to adjudicate the proceeding concerning CenturyTel rapidly as it had no intention of opposing or participating in NRS's ETC Cause and the OCC may have examined the "public interest" component in said Cause relative to RBE).

universal service goals, PUD Staff believes grant of the requested ETC designation is in the public interest.”¹¹

24. On March 4, 2015, the Commission issued a Public Notice identifying NRS as an additional provisionally selected bidder under RBE. NRS’s total requested support of \$7,415,062 is comprised of six (6) selected project bids (Project IDs 2, 3, 5, 7, 9, & 11) which, if combined, cover 588 census blocks.¹²

III. GRANT OF REQUESTED WAIVER AND EXTENSION OF TIME IS AUTHORIZED UNDER THE RBE

A. NRS Engaged in Good Faith to Obtain ETC Designation

In the *RBE Order* and other materials, the Commission has expressly authorized waiver and, at the least, implicitly contemplated extending the March 5, 2015 ETC designation deadline associated with the post-selection review process.¹³ Accordingly, the *RBE Order* specifically addresses ETC designation requirements and waiver:

“We remind entities that they *need not* be ETCs at the time they initially submit their formal proposals for funding through the rural broadband experiments, but that they must obtain ETC designation after being identified as winning bidders for the funding award. As stated in the *Tech Transitions Order*, we expect entities to confirm their ETC status within 90 days of the public notice announcing the winning bidders selected to receive funding However, a waiver of this deadline may be appropriate if a winning bidder is able to demonstrate that it has *engaged in good faith* to obtain ETC designation, but has not received approval within the 90-day timeframe.”¹⁴

¹¹ See *ETC Order* at 12.

¹² *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90, 14-259, FCC Public Notice DA-15-288 (March 4, 2015).

¹³ The experimental component of the RBE inherently justifies waving Commission rules (e.g. deadlines) as evidenced by all post-selection review requirements contemplate potential waiver. See generally *RBE Order*

¹⁴ *RBE Order* 29 FCC Rcd at 8779, para. 22. (Emphasis added).

The footnote (FN 52) to the *RBE Order* excerpt evidences the Commission's expectation for provisionally selected bidders to file ETC applications as soon as possible upon release of the December 5, 2014 Public Notice identifying said bidders.¹⁵ A bidder that files its ETC application within fifteen (15) days of December 5, 2014 will be presumed to have shown good faith.¹⁶

Moreover, the Commission's "FAQs for Rural Broadband Experiments" (FAQ) at Section III(E) provides the following with regard to waiver:

"The Commission has indicated that a waiver of the 90-day deadline for obtaining an ETC designation may be appropriate if the provisionally selected bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeline. To the extent any provisionally winning bidder believes it will be unable to obtain an ETC designation within this 90-day period due to circumstances outside of its control, i.e. the March 5th deadline, it may file a request for waiver with the FCC, and should describe in its waiver request when it filed for ETC designation at the state and any relevant facts regarding the progress of the state ETC proceeding."¹⁷

In the instant matter, NRS is requesting the Commission grant an extension of time and/or waiver of the March 5, 2015 deadline relative to post-selection review for Project IDs 8 & 10. These projects cover certain census blocks that appear to be located within the study areas of Chouteau (Project ID 10) and CenturyTel (Project ID 8). In accordance with the *RBE Order*, NRS is diligently working to obtain the requisite ETC designation through preparations for, and ultimate filing of the Application in the ETC Cause on December 19, 2015. In fact, filing occurred within fifteen (15) days of the Commission's release of the Public Notice, and thus, a presumption of good faith should apply to NRS's requested relief contained within this request for extension of time and/or waiver. Despite NRS supplementing the Application on January 29,

¹⁵ *Id.* at 8779, para. 22 and FN 52

¹⁶ *Id.*

¹⁷ FAQs for Rural Broadband Experiments at § III(E) (available at http://transition.fcc.gov/wcb/FAQ_Rural_Broadband_Experiment.pdf) (Emphasis added).

2015 to include exchanges of Chouteau and CenturyTel, the ETC Cause relevant to such supplementation was commenced within the fifteen (15) day window and adding such exchanges was part and parcel of the initial filing. With the good faith presumption applying to NRS, the Commission indicated that the relief requested herein may be appropriate.¹⁸

If the Commission deems the presumption to be inapplicable, NRS respectfully submits the facts provided in the “Procedural Background” portion of this Petition as evidence of its good faith and diligent efforts to obtain designation by the March 5, 2015 deadline. Successfully obtaining ETC designation in the AT&T exchanges within the required timeframe is just one example of NRS’s good faith. With or without the presumption of good faith in the instant matter, NRS acted in accordance with the *RBE Order* relative to seeking ETC designation in areas covering certain Project ID 8 & 10 census blocks, and thus, an extension of time and/or waiver is justified.

B. Good Cause

The *RBE Order* cites to 47 C.F.R. § 1.3 when discussing waiver in the ETC context.¹⁹ Generally, 47 C.F.R. § 1.3. provides Commission rules may be waived for good cause shown. The Commission’s waiver of a rule is permissible when *particular facts* make strict compliance inconsistent with the public interest.²⁰ The Commission “may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish ‘public interest’ for a broad range of situations, does not relieve it of an obligation to seek out the ‘public

¹⁸ Notably, NRS offers that the fifteen (15) days window for filing an ETC application, which triggers a presumption of good faith, does not appear to provide ample time for entities to conduct necessary research and analysis relative to the specific exchanges for which ETC designation is required under the RBE. In Section II of this Petition, NRS discusses the difficulty of ascertaining the specific location of census blocks relative to exchanges or study areas, and thus, explains NRS’s need to supplement its initial Application to include Chouteau and CenturyTel study areas. For those reasons, NRS respectfully requests that the presumption remain applicable to NRS’s Application filed within the fifteen (15) day timeframe irrespective of the subsequent amendments filed in the ETC Cause.

¹⁹ *RBE Order* 29 FCC Rcd at 8779, para. 22.

²⁰ *AT&T Corporation v. Federal Communications Commission*, 448 F.3d 426, 433(D.C. Cir. 2006), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

interest’ in particular, individualized cases.”²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²²

Waiver of the Commission’s rules is appropriate if special circumstances warrant a deviation from the general rule.²³ In relation to the March 5, 2015 deadline, Section III(E) of the FAQ expounds on the meaning of circumstances through reference to waiver because of “circumstances outside of its control.”²⁴

The particular facts of the instant matter render NRS’s relief requested herein consistent with the public interest. The RBE seeks to advance the deployment of voice and broadband-capable networks in rural, high-cost and extremely high-cost areas. NRS is headquartered in northeast Oklahoma where many of the surrounding areas are remote and rural Oklahomans are vastly underserved. Prior to being provisionally selected as a winning bidder under the RBE, NRS was already committed to providing an expanded and improved network and facilities to enable provision of quality service to areas in close proximity to those census blocks covered in Project IDs 8 & 10. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services to customers in Chouteau and CenturyTel study areas.

NRS is also proposing to offer broadband reaching speeds up to 1 gigabit to residential and business customers. These unique speeds, along with NRS’ potential implementation of voice-over-internet-protocol (“VoIP”) to provide supported voice telephony services, encompass a competitive alternative to currently offered services in the applicable rural study areas.

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²² *Id.* at 1159.

²³ *Id.* at 1157.

²⁴ FAQ at § III(E).

In addition, NRS was successful in obtaining ETC designation in the ETC Cause wherein the OCC believed NRS will be capable of providing the supported services and PUD staff testified ETC designation was in the public interest.²⁵ Further, NRS has been provisionally selected as a next-in-line bidder covering census blocks that may be located in Chouteau and CenturyTel study areas associated with Project IDs 8 & 10 which are the subject of NRS's Petition. NRS will also be required to certify ETC designation under the post-selection review process in connection with the next-in-line provisional selection and has already commenced ETC proceedings relative to the subject study areas. Granting an extension of time and/or waiver of the March 5, 2015 deadline for the applicable Project IDs, will improve the possibility that NRS complies with next-in-line mandates, and thus, is certainly consistent with the public interest and the underlying Commission rules indicated.

Specific to the "circumstances" required for extension of time and/or waiver, the facts relevant to the instant request demonstrate circumstances outside of NRS's control despite good faith efforts to obtain requisite ETC designation. In such situation, the FAQ authorizes the filing of this Petition for Extension of Time and/or Waiver. The FAQ requires submission of information as to the filing of the Application in the ETC Cause and facts relevant to the progress of the ETC cause. NRS submits that its recitation of the applicable events in the "Procedural Background" section above is intended to satisfy the Commission's requirements stated in the FAQ.

With specific regard to demonstrating circumstances outside of NRS's control, the FAQ references the inability to meet the March 5, 2015 deadline as one such circumstance.

²⁵ Notably, the law governing the OCC's designation of an applicant as an ETC is devoid of any public interest finding requirement, but nonetheless, the PUD staff testified that NRS's ETC designation was in the public interest. *ETC Order* at 12.

Unquestionably, the *RBE Order* expressly provides that entities “. . . need not be ETCs at the time they initially submit their formal proposals for funding through the [RBE]”²⁶ Submission of proposals by non-ETC entities corresponds with the Commission’s desire to “encourage participation in the [RBE] from a wide range of entities”²⁷ Unfortunately, allowing non-ETC entities to submit proposals, but also requiring certification of ETC designation within ninety (90) days of the Public Notice, created significant hardship for entities to obtain ETC designation in Oklahoma.

The appropriate Oklahoma agency having jurisdiction over ETC proceedings is the OCC. As referenced above, ETC designation for census blocks located within rural telephone company study areas requires the OCC to find such designation is in the public interest.²⁸ While there exists no specific standards or time requirements for the OCC to make such determination, the procedural background provided reveals the OCC’s apprehension to issue such finding on a condensed time line. For instance, NRS sought ETC designation in CenturyTel’s study area as certain census blocks covered in Project IDs 8 where located therein. Despite CenturyTel stating that it would not be opposing or participating in the ETC Cause, the OCC was reluctant to find ETC designation served the public interest before March 5, 2015.²⁹ As such, neither NRS nor applicable law can dictate the timeframe in which the OCC issues a public interest finding, which clearly demonstrates circumstances outside of NRS’s control. Project IDs 8 & 10 required a public interest finding in order to certify ETC designation, but the uncontrollable circumstances

²⁶ *RBE Order* 29 FCC Rcd at 8779, para. 22.

²⁷ *Id.* at 8779, para. 21.

²⁸ 47 U.S.C. § 214(e)(2).

²⁹ After NRS supplemented its Application to include the rural telephone company exchanges, the OCC had agreed to a proposed final hearing date of February 27, 2015 in the ETC Cause. Upon Chouteau expressing opposition to the proposed procedural schedule, the OCC recanted its earlier agreement on proposed dates. The original agreement on the date for hearing supports NRS’s good faith ETC efforts as it appeared possible for the final hearing on the Application, *as supplemented*, to conclude before the March 5, 2015 deadline.

relevant thereto rendered NRS's ability to satisfy the March 5, 2015 deadline impossible. For these reasons, good cause exists to grant the relief requested herein.

In order for NRS to increase the possibility of obtaining ETC designation before the subject deadline for Project IDs 1, 4, 6, & 12, it was forced to dismiss the ETC cause as to Chouteau and CenturyTel. However, NRS continued its good faith efforts by promptly re-filing applications requesting ETC designation in the study areas of both rural telephone companies after dismissal. NRS believes that the OCC could make the requisite public interest findings rapidly in the pending ETC proceedings as analysis relative thereto may have commenced during the ETC Cause. Moreover, PUD testimony at the final hearing supports NRS's position regarding timing of public interest determinations. In the ETC Cause, testimony on behalf of the PUD opined that ETC designation is in the public interest because federal support under the RBE will increase and/or make available services in rural, high-cost price cap areas. It is likely that ETC designation in Chouteau and CenturyTel study areas would be deemed to serve the public interest in light of PUD's testimony in the ETC Cause. For these reasons, NRS does not anticipate extension of time and/or waiver will significantly impact the Commission's RBE schedule. This is especially true considering next-in-line bidders, of which NRS is one, have until June 2, 2015 to obtain ETC designation for RBE support. Therefore, good cause exists and it appears appropriate for the Commission to grant the relief requested herein.

Lastly, there exists potential for the Commission to view this Petition to determine if NRS's position raises arguments different from those considered in the rule-making process preceding the *RBE Order*.³⁰ Generally, the Commission's anticipation of waivers in the context of ETC designation and the March 5, 2015 deadline shows consideration of and support for NRS's requested relief. Additionally, in the January 31, 2014 *Tech. Transitions Order* preceding

³⁰ See *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680

the *RBE Order*, the Commission stated its desire to entertain proposals to extend next generation networks in areas where the incumbent provider is a rate-of-return carrier.³¹ In the *RBE Order*, the Commission opined:

We also decide that we will accept rural broadband experiment proposals only from entities that seek to provide service in price cap territories. Over the coming months, we will be focused on reviewing the record we will shortly receive regarding near term and long term reforms to develop a Connect American Fund for rate-of-return carriers. We believe it prudent to focus our efforts on these issues, *rather than confronting the many difficult issues with potential implementation of rural broadband experiments in rate-of-return areas.*³²

The footnote to the above excerpt clarifies that winning bidders under the RBE are prohibited from building in portions of census blocks served by rate-of-return incumbents and experiment funding is only to be used in price cap territories.³³

From NRS's review of relevant materials, ambiguity seems to exist relative to the *RBE Order* and a situation involving a "hybrid" regulated service provider. As discussed above, Chouteau stated it was a price cap carrier for purposes of federal universal services support, but is a rate-of-return incumbent in relation to other aspects of its service provision. As the "hybrid" concept may have added to NRS's failure in meeting the March 5, 2015 deadline (see discussion above under Section II "Procedural Background"), good cause for granting an extension of time and/or waiver in this case is further supported if the Commission did not consider potential compliance obstacles arising in connection with "hybrid" carriers.

IV. CONCLUSION

NRS has consistently committed its resources to the fullest extent in complying with deadlines established for the RBE. For NRS Project IDs 8 & 10, it is in the public interest to

³¹ *Technology Transitions et al.*, GN Docket No. 13-5 *et al.*, Order *et al.*, 29 FCC Rcd 1433, 1500 at para.205. (2014).

³² *RBE Order* 29 FCC Rcd at 8778, para. 17. (Emphasis added).

³³ *Id.* at para. 17, FN 43.

extend the RBE post-review selection process March 5, 2015 deadline for submitting appropriate documentation of ETC designation for census blocks encompassed within rural telephone company study areas and/or waive said deadline with regard to same. Granting such relief will allow NRS to continue seeking ETC designations in proceedings pending before the OCC and will facilitate the Commission's and NRS's joint goal of bringing affordable, reliable, and dearly needed services to unserved rural areas of Oklahoma.

DATED this 5th day of March, 2015.

Respectfully submitted,

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Inc.

By: /s/ Michael T. Torrone
Michael T. Torrone, OBA #21848
Nathan M. Bloomer, OBA #31944

EXHIBIT A

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

JM
NMS

APPLICATION OF NORTHEAST RURAL
SERVICES, INC. FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996

)
) CAUSE NO. PUD 201400359
)
) ORDER NO. **637332**
)

HEARING: February 27, 2015, in Courtroom B
2101 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jacqueline T. Miller, Administrative Law Judge

APPEARANCES: Michael T. Torrone and Nathan M. Bloomer, Attorneys *representing*
Northeast Rural Services, Inc.
Kimberly Prigmore, Senior Attorney *representing* the Public Utility
Division, Oklahoma Corporation Commission
Jerry J. Sanger and Erick W. Harris, Assistant Attorneys General
representing the Office of Attorney General, State of Oklahoma

FINAL ORDER
DESIGNATING NORTHEAST RURAL SERVICES, INC.
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

BY THE COMMISSION:

The Corporation Commission ("Commission") of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the Application, as Amended of NORTHEAST RURAL SERVICES, INC. ("NRS") for an order of the Commission designating it as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, as amended ("Act"),¹ Title 47, Part 54 of the Federal Communications Commission's ("FCC") Regulations,² and Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution. NRS requests ETC designation in the following exchanges served by Southwestern Bell Telephone Company d/b/a AT&T Oklahoma: Claremore; Chelsea; Vinita; Pryor; Ketchum;

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. Part 54.

EXHIBIT
"A"

Afton; Fairland; Grove; Miami; South Chetopa; Picher; Commerce; Quapaw; and Nowata (hereinafter the "Service Area"). NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") including, but not limited to, the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the Service Area.

PROCEDURAL HISTORY

On December 19, 2014, NRS filed its Application in this cause (or "proceeding").

On January 29, 2015, NRS filed an Amendment to Application. Also on January 29, 2015, NRS filed a Motion for Protective Order. On February 4, 2015, Kimberly K. Argenbright filed an Entry of Appearance on behalf of Chouteau Telephone Company d/b/a FairPoint Communications ("Chouteau" or "FairPoint"). On February 5, 2015, the Administrative Law Judge ("ALJ") heard and recommended NRS's Motion for Protective Order. On February 6, 2015, Jerry J. Sanger and Erick W. Harris filed an Entry of Appearance on behalf of the Oklahoma Attorney General. On February 11, 2015, NRS filed a Second Amendment to Application. On February 12, 2015, the Commission issued an Order granting the Motion for Protective Order, Order No. 636507. The Motion for Procedural Schedule and oral dismissal came on for hearing on February 12, 2015, and was heard and recommended at that time. Also at the hearing, Counsel for the Public Utility Division ("PUD") stated that Southwestern Bell Telephone Company, d/b/a AT&T Oklahoma ("AT&T" or "AT&T Oklahoma") was not participating in this cause. Counsel for NRS stipulated on the record that it is no longer seeking ETC designation for the rural telephone company study areas of Chouteau Telephone Company d/b/a FairPoint Communications ("Chouteau" or "FairPoint") and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink ("CenturyTel") in this proceeding and moved to dismiss

Chouteau and CenturyTel as parties of record pursuant to OAC 165:5-9-5(f) without prejudice to refile for relief in the subject rural telephone company areas or otherwise.

Also on February 12, 2015, NRS fax-filed a Dismissal of Interested Parties Without Prejudice. Chouteau had no objection and, if dismissed, Chouteau agreed to withdraw its intervention in this cause and also in Cause No. PUD 201500014 upon dismissal in that Cause in conformity with the record of the February 12, 2015, hearing on NRS's Motion for Procedural Schedule in this cause. A Motion to Bifurcate Proceedings was filed by NRS on February 12, 2015, and was heard and dismissed on February 19, 2015.

On February 13, 2015, Sheila Allgood filed Direct Testimony on behalf of NRS. On February 17, 2015, the original copy of the Dismissal of Interested Parties was filed. On February 19, 2015, Sheila Allgood filed Supplemental Testimony on behalf of NRS. Also on February 19, 2015, the Commission issued Order No. 636708, Order Granting Motion for Procedural Schedule and Dismissal Without Prejudice. On February 20, 2015, Ryan Hedrick filed Prefiled Responsive Testimony on behalf of the PUD of the Commission. On February 23, 2015, Sheila Allgood filed Rebuttal Testimony on behalf of NRS.

On February 23, 2015, NRS filed its Brief Regarding Eligible Telecommunication Carrier Designations. Also on February 23, 2015, the PUD filed its Brief on the Requirements of Eligible Telecommunications Carrier Designation. On February 24, 2015, Chouteau Telephone Company d/b/a FairPoint Communications filed its Withdrawal of Appearance and Participation. On February 25, 2015, PUD filed its Exhibit List and the Summary Testimony of Ryan Hedrick. Also on February 25, 2015, NRS filed its Exhibit List and the Summary of Rebuttal Testimony of Sheila Allgood, the Summary of Supplemental Testimony of Sheila Allgood, and the

Summary of Direct Testimony of Sheila Allgood. On February 26, 2015, the PUD filed its Supplemental Brief on the Requirements of Eligible Telecommunications Carrier Designation.

On February 27, 2015, NRS filed its notice of waiver of hearing.

SUMMARY OF TESTIMONY

Sheila Allgood

Sheila Allgood stated she was the manager of NRS's Bolt Fiber Optic Services ("BOLT") and RECtec Technology and Communications ("RECtec") divisions. Ms. Allgood stated her business address was 27039 S. 4400 Road, Suite B, P.O. Box 399, Vinita, OK 74301. Ms. Allgood described her experience managing RECtec for thirteen (13) years, during which time RECtec grew its customer base each year. Ms. Allgood also described her oversight of BOLT, with her responsibilities including sales, customer service and complaints, coordination of technical deployment, along with regulatory business operations.

Ms. Allgood further explained her involvement with the Fiber to the Home Council and Utilities Telecom Counsel. Ms. Allgood testified she attended NEO A&M College and studied computer science, in addition to graduating from the Business Management Internship Program at the University of Wisconsin-Madison.

After ratifying and confirming the statements made on behalf of NRS in the Application and Amendments thereto, Ms. Allgood explained her testimony was to support NRS's Application, as Amended, to be designated as an ETC. Ms. Allgood incorporated the Application and Amendments to Application filed in this Cause into her testimony.

Ms. Allgood explained NRS held a Certificate of Convenience and Necessity to provide data only telecommunications services throughout the State of Oklahoma, which the Commission issued in Order Number 615809, Cause No. PUD 201200015. She also explained

on February 26, 2015, the Commission granted NRS's Application, as Amended in Cause No. PUD 201500014, requesting authority to expand the services authorized under NRS's existing CCN, to include local exchange telecommunications services in the exchanges of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma ("AT&T") and Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest.

Ms. Allgood discussed the current services NRS provides, which include right of way services, dedicated broadband internet service to schools, libraries, hospitals, businesses and enterprise customers in addition to dealing with two-way radios. She also discussed BOLT's currently expanding fiber optic network which will cover a major portion of the 1,558 square miles of rural area in northeast Oklahoma, passing 31,273 households and 1,133 businesses. She described BOLT's intended ultra-high speed broadband offerings, which will reach speeds of 1 gigabit.

Ms. Allgood testified NRS is seeking ETC designation in this Cause for the purpose of receiving all available support available from the federal Universal Service Fund, which includes the Connect America Fund (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers in the AT&T exchanges listed on Exhibit "A" of its Application and Amended Exhibit "A" of its Amendment to Application. Ms. Allgood testified AT&T is not a rural telephone company.

Ms. Allgood stated Section 214(e)(2) of the Telecommunications Act of 1996 ("Act") provides the applicable requirements for an ETC designation made by a State commission. She testified Section 214(e)(2) of the Act directs a State to designate a common carrier meeting the requirements of Section 214(e)(1) as an ETC. Section 214(e)(1) of the Act requires a common carrier to, throughout the service area for which designation is received: (A) offer the supported

services using a combination of the carriers own facilities and resale of another carrier's services (including the services offered by another ETC); and (B) advertise the availability of such services and charges therefor using media of general distribution.

Ms. Allgood explained that in addition to any information services NRS otherwise provides, NRS will provide the supported telecommunications services as a telecommunications carrier. She further testified to the extent NRS was offering the supported services on a nondiscriminatory basis for a fee directly to the public, or such classes of users to be effectively available directly to the public, NRS would be treated as a common carrier under the Act and eligible for designation as an ETC.

Ms. Allgood testified the universal service fund supported services are voice telephony services, which provide voice grade access to the public switched network or its functional equivalent, minutes of use for local service at no additional charge to end users, access to emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the same has implemented 911 or enhanced 911, and local toll limitation services to qualifying low-income customers as provided in Subpart E of Title 47 of the Code of Federal Regulations. Ms. Allgood explained NRS would provide the supported services using either its own facilities or a combination of its own facilities and the resale of another carrier's service, though NRS intended to provide the services using its own facilities. Further, she stated NRS intends to utilize voice-over-internet-protocol technology to provide the supported voice services.

Ms. Allgood next discussed the third requirement for ETC designation under Section 214(e)(2) of the Act, which is to advertise the availability of the services and charges therefor using media of general distribution. Ms. Allgood stated NRS intends to meet this requirement

through advertising in multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailing, public displays, and bill inserts, amongst other available mediums.

Ms. Allgood stated NRS provides high-quality customer service and will continue to do so in relation to the services subject to this Cause. Ms. Allgood also discussed the urgency in receiving an ETC designation by March 5, 2015, as NRS was provisionally awarded support pursuant to the rural broadband experiment and must confirm its status as an ETC by March 5, 2015.

Ms. Allgood testified that, consistent with the record of the February 12, 2015, hearing on NRS's Motion for Procedural Schedule, NRS stipulated on various grounds it was no longer seeking ETC designation in the study areas of Chouteau and CenturyTel in this Cause. Ms. Allgood clarified the same substantive stipulation was made during the February 12, 2015, hearing on NRS's Motion for Protective Order filed in Cause No. PUD 201500014.

Ms. Allgood stated her understanding that Chouteau and CenturyTel would be dismissed without prejudice, and not be interested parties in this Cause, if the Order Granting Motion for Procedural Schedule and Dismissal without Prejudice, set for signing on February 19, 2015, was granted. Ms. Allgood clarified Chouteau and CenturyTel were also dismissed in the CCN Cause as more fully explained on the record of the February 12, 2015, Motion for Protective Order hearing.

Ms. Allgood testified regarding the rural broadband experiment post-selection review process. Ms. Allgood testified the FCC will issue a public notice declaring entities ready to be authorized for support. Such declaration will be made based on submission of audited financial statements, a technology description including a network diagram certified by a professional

engineer, a letter of credit commitment letter, and an ETC. Ms. Allgood testified NRS only needs to complete the ETC designation. Further, Ms. Allgood stated the remainder of the post-selection review process consists of obtaining a letter of credit and attorney opinion letter. Ms. Allgood testified the purpose of the post-selection review was to ensure entities are technically and financially qualified to provide the supported services.

Ms. Allgood testified NRS met the requirements for designation as an ETC under Section 214(e)(2) of the Act.

Upon cross-examination and redirect, Ms. Allgood stated she understood the PUD's position to be common carrier status requires CCN authority and a tariff on file with the Commission. Ms. Allgood testified NRS, pursuant to Section 214(e)(1) of the Act, intends to provide the supported services throughout the service area for which designation is sought as required by law. Ms. Allgood testified she understood PUD staff reviewed confidential information related to current and planned network facilities. Further, Ms. Allgood testified the rural broadband experiment does not have a build out requirement. Ms. Allgood also stated NRS would provide the supported services per applicable law.

Ms. Allgood did not disagree with Ryan Hedrick's testimony regarding the supported services and advertising requirements.

Ryan Hedrick

Ryan Hedrick, Public Utility Regulatory Analyst, testified on behalf of the Public Utility Division of the Oklahoma Corporation Commission. PUD Staff recommended that an Order granting the ETC designation requested by NRS be issued by the Commission. However, the Order should also provide for the revocation of the designation at the point NRS is unsuccessful in receiving the Rural Broadband Experiment funding. In that event, or even prior to the final

determination of funding, NRS should be allowed to initiate a cause to supplement this record to reflect its plans for network deployment and service provision within this same service area in order to receive ETC designation without consideration of the Rural Broadband Experiment funding.

Mr. Hedrick testified that in its Amended Application NRS is requesting designation as an ETC in order to be eligible to receive support from the federal Universal Service Fund including the CAF including Phase 2 support in price cap areas and support for low income customers in specific exchanges of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma.

Mr. Hedrick testified that on December 5, 2014, the FCC released a Public Notice announcing the bidders that have been provisionally selected to receive funding for the FCC's Rural Broadband Experiments, a component of the CAF, subject to the post-selection review process. NRS was selected to receive \$1,029,274 to build broadband network in census blocks within Craig, Delaware, Ottawa, and Mayes counties. In order to be eligible to receive support from the Federal USF, NRS must be designated as an ETC in the census blocks where they were provisionally selected to receive support. The deadline for providing evidence of its ETC designation to the FCC is March 5, 2015.

Mr. Hedrick testified that the Rural Broadband Experiment funds are for the purpose of advancing the deployment of voice and broadband capable networks in rural, high-cost areas, including extremely high-cost areas. NRS, with the \$1,029,274 million of funding from the Rural Broadband Experiment, would deploy such networks in the particular census blocks with which the funding is associated; within the service areas for which it seeks ETC designation.

Mr. Hedrick testified that in order to be considered a common carrier, NRS filed an Application in Cause No. PUD 201500014 seeking to expand the services it offers under its CCN to include local exchange telecommunications services and that NRS will file a tariff. A Commission order is expected to grant this request on February 26, 2015. Mr. Hedrick stated this was the Commission's position on how an entity meets the common carrier requirements.

Mr. Hedrick testified that NRS is not seeking ETC designation in any of the exchanges associated with FairPoint or CenturyLink, and the Commission issued Order Number 636708 on February 19, 2015, granting the dismissal of FairPoint and CenturyLink from this proceeding, and accordingly, these service areas were not considered in his review.

Mr. Hedrick testified that NRS, in its Application and Direct Testimony of Sheila Allgood, affirmed that it will offer the supported services outlined in 47 CFR § 54.101.

Mr. Hedrick testified that NRS, in its Application and Direct Testimony of Sheila Allgood, would provide all of the supported services using its own facilities pursuant to 47 U.S.C § 214(e). However, PUD's review of NRS's FCC Rural Broadband Experiment build out plan involved the construction of facilities utilizing support from the Rural Broadband Experiments to serve the requested service territories. This is discussed further below. NRS has also committed to provide service in a timely manner to those customers passed by its facilities, and will provide service to those customers who are not passed by their facilities if service can be provided at a reasonable cost.

Mr. Hedrick testified that in its Application and the Direct Testimony of Sheila Allgood, NRS will advertise the availability of supported services pursuant to 47 CFR § 54.201(d)(2).

Mr. Hedrick testified that NRS will comply with all of the requirements for provision of low income support that are outlined in 47 CFR §54 Subpart E and OAC 165:55-13-14.

Mr. Hedrick further testified that NRS will not seek Lifeline Universal Service support prior to having filed a tariff, to include Lifeline service, with the Oklahoma Corporation Commission.

Mr. Hedrick testified that NRS has the requisite managerial and technical experience needed to provide the proposed services.

Mr. Hedrick testified that NRS allowed Staff to review the build out plan that was submitted to the FCC in support of NRS's Application for the Rural Broadband Experiment funding. Mr. Hedrick further testified that the FCC in its *Report and Order* in CC Docket No. 9645, released March 17, 2005, at para. 21 adopts a requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area “. . . by submitting a formal network improvement plan” In this same order, the FCC, at para. 58, encourages state commissions to require all ETC applicants “to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order.” It is entirely appropriate for the Commission to apply the build out plan requirement found at 47 CFR §54.202(a)(1)(ii) in its review of ETC Applications. Mr. Hedrick testified that the requirement to provide a build out plan as outlined in 47 CFR §54.202(a)(1)(ii) was satisfied with the build out plan based on the receipt of the Rural Broadband Experiment funding.

Mr. Hedrick further testified that NRS will deploy the proposed network in multiple phases with construction already underway. NRS will offer speeds that meet or exceed the requirements set forth in the Rural Broadband Experiment and offer the supported services. As a requirement of the FCC's Rural Broadband Experiment, NRS committed to serve 85% of supported locations within 3 years, and 100% of supported locations within 5 years which is a reasonable amount of time to serve NRS's proposed service territory.

Mr. Hedrick testified that because NRS will use the anticipated federal funds to increase and establish the availability of broadband telecommunications services in rural, high-cost price cap areas, which furthers universal service goals, PUD Staff believes grant of the requested ETC designation is in the public interest. However, the demonstrated public interest relies significantly on the assumption that NRS will ultimately receive the \$1,029,274 million in support from the FCC's Rural Broadband Experiment for which it has been provisionally selected.

Mr. Hedrick testified that without receipt of the Rural Broadband Support, NRS's ability to deploy the described network and provide the supported services throughout the service area for which it is seeking ETC designation comes into question.

Mr. Hedrick further testified that it is unclear how NRS would facilitate or finance the network deployment it has described in support of its Application or what alternative federal universal service fund support, if any, might be available to NRS absent the requested funding. However, given that the areas for which the funding is being made available have been identified as needing universal service funding to spur this network deployment activity, a question is created as to how or whether NRS would invest its own financial and operational resources in these areas. Accordingly, it would also be unclear as to NRS's ability to deliver the supported services throughout the requested service territory in the absence of the Rural Broadband Experiment funding.

Attorney General's Statement of Position

Erick W. Harris, on behalf of the Oklahoma Attorney General, orally stated the Attorney General's position was to support the PUD's recommendation and testimony in this cause.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it has jurisdiction over the above-entitled cause pursuant to the provisions of 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201; and Art. IX § 18 of the Oklahoma Constitution.

THE COMMISSION FURTHER FINDS that proper notice was given in this cause.

THE COMMISSION FURTHER FINDS that NRS has met all state and federal requirements for designation as an ETC throughout the requested exchanges.

THE COMMISSION FURTHER FINDS that NRS has been provisionally selected by the FCC to receive \$1,029,274 in conjunction with its Rural Broadband Experiment, subject to a post-selection review process.

THE COMMISSION FURTHER FINDS that, based on being provisionally selected to receive the Rural Broadband Experiment funding, the designation of NRS as an ETC in the requested exchanges is in the public interest. The requested exchanges are identified in Attachment "A" to this Order.

THE COMMISSION FURTHER FINDS that should NRS not be successful in receiving Rural Broadband Experiment funding then, PUD shall file an Application seeking revocation of the ETC designation.

THE COMMISSION FURTHER FINDS that the Motion to Bifurcate Proceedings is hereby dismissed as moot.

ORDER

THE COMMISSION THEREFORE ORDERS that the Recommendation of the Administrative Law Judge is hereby approved.

THE COMMISSION FURTHER ORDERS that Northeast Rural Services, Inc. is hereby designated as an ETC in the requested exchanges as set forth in Attachment "A" to this Order consistent with the findings herein above.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION

Bob Anthony

BOB ANTHONY, Chairman

Dana L. Murphy

DANA L. MURPHY, Vice Chairman

J. Todd Hiatt

J. TODD HIETT, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by their signatures above this 4 day of March, 2015.

[seal]

Peggy Mitchell

PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions, and order are the report and recommendations of the undersigned Administrative Law Judge.

Jacqueline T. Miller

JACQUELINE T. MILLER
Administrative Law Judge

March 2, 2015

Date

ATTACHMENT "A"

Southwestern Bell Telephone d/b/a AT&T Exchanges

Claremore

Chelsea

Vinita

Pryor

Ketchum

Afton

Fairland

Grove

Miami

South Chetopa

Picher

Commerce

Quapaw

Nowata

FEB 20 2015
FILED / RECEIVED

FEB 25 2015

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL)
 SERVICES, INC. FOR DESIGNATION AS)
 AN ELIGIBLE TELECOMMUNICATIONS)
 CARRIER PURSUANT TO THE)
 TELECOMMUNICATIONS ACT OF 1996)

CAUSE NO. PUD 201 **500079**

APPLICATION OF NORTHEAST RURAL SERVICES, INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE STUDY AREA OF CHOUTEAU TELEPHONE
COMPANY D/B/A FAIRPOINT COMMUNICATIONS

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, as amended ("Act"),¹ Part 54 of the Federal Communications Commission ("FCC") Regulations,² Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission ("OCC") Regulations.³ NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") support mechanisms, including the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. In support of this Application, NRS submits the following:

I. APPLICANT

On September 12, 2013, the OCC issued NRS a certificate of convenience and necessity to provide data-only telecommunications throughout the State of Oklahoma.⁴ NRS is an Oklahoma corporation providing data-only telecommunications to its customers in Oklahoma.

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. Part 54.

³ Okla. Admin. Code § 165:59-3-14(e).

⁴ OCC Order Number 615809, Cause Number 201200015

EXHIBIT
"B"

OKLA CORP COM
 RECEIPT 1505940028
 Date: 02/25/2015 Time: 11:18
 Case: 201500079 PUD Cashier: LRI
 Payor: NORTHEAST RURAL SERVICES, IN
 Check 129224 \$100.00
 71 OIL&GAS/TRAN/PUD APP

NRS's designated representative is Sheila Allgood, P.O. Box 399, Vinita, OK 74301, (918) 256-9441. NRS's attorneys are Logan and Lowry, LLP (Attn: Michael T. Torrone), 101 South Wilson Street, P.O. Box 558, Vinita, OK 74301, (918) 256-7511. NRS has proceedings pending before the OCC in Cause No. PUD 201400359⁵ and Cause No. PUD 201500014.⁶

II. ALLEGATION OF FACTS

NRS submitted a bid for CAF Phase II rural broadband experiment support in price cap areas to deploy new, robust broadband to potential Oklahoma consumers.⁷ The FCC awarded NRS \$1,029,274.00 to provide services in Craig, Delaware, Ottawa and Mayes counties in the State of Oklahoma. As stated in the *Tech Transition Order*,⁸ the FCC requires NRS to be designated as an ETC within ninety (90) days of the award date,⁹ subject to the FCC's ability to waive the same for good cause shown. Accordingly, NRS respectfully requests that the OCC expeditiously approve this Application for ETC designation so that NRS may utilize CAF Phase II support to provide broadband and USF supported services to rural Oklahoma.

In its *USF/ICC Transformation Order*,¹⁰ the FCC made sweeping changes to federal universal service support mechanisms. One of the most significant changes was the creation of the CAF, which the FCC created to ultimately replace all of the FCC's current high cost support mechanisms. In addition, the FCC expanded the purpose of universal service to increase the availability of broadband service to unserved and remote areas. In areas served by price cap carriers, the FCC introduced CAF support for broadband in two phases. During the first phase,

⁵ Application for Eligible Telecommunications Carrier designation is certain Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges.

⁶ Application for expansion of authorized services under data-only Certificate of Convenience and Necessity.

⁷ See *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98 at ¶ 1 (Adopted: July 11, 2014) ("Rural Broadband Experiment Order").

⁸ *Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 at ¶ 118 (Adopted: January 30, 2014) ("Tech Transition Order").

⁹ The applicable date for ETC designation is March 5, 2015. See *Rural Broadband Experiment Order* at ¶ 22.

¹⁰ *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Adopted October 27, 2011).

legacy high cost support to price cap carriers was frozen and carriers electing to receive additional funding were required to extend broadband service to additional unserved locations for every \$775 in incremental support. During Phase II, support is subject to the price cap carrier's commitment to deploy broadband on the state level, which allows the price cap carrier to receive funding based on an FCC cost model. Where the price cap carrier declines the state-level commitment, the FCC decided to implement competitive bidding in order to distribute support in a way that maximizes the extent of robust, scalable broadband service. NRS's current ETC application involves funds to be distributed under the CAF.

Universal service is a primary goal of the OCC's telecommunications policy, just as universal service is a primary aim of the FCC.¹¹ Section 214(e)(2) of the Act provides the OCC federally delegated authority to designate NRS as an ETC. Federal law requires an entity designated as an ETC to, throughout the service area which the entity is so designated, "offer the services supported by Federal universal support mechanisms under [Section 254(c) of the Act] either using its own facilities or a combination of its own facilities and resale of another carrier's services" in addition to advertising "the availability of such services and the charges therefore using media of general distribution."¹² Further, if the common carrier's proposed service territory is currently serviced by a rural telephone company, the OCC must find the ETC designation is in the public interest.¹³

The FCC has adopted minimal rules for state commission ETC designations, and these rules implement the provisions of Section 214(e) of the Act.¹⁴ In Oklahoma, the OCC echoed these requirements when adopting a rule requiring telecommunications service providers who

¹¹ Okla. Admin. Code § 165:55-17-19; *See* 47 U.S.C. § 254(b).

¹² 47 U.S.C. § 214(e)(1).

¹³ 47 U.S.C. § 214(e)(2).

¹⁴ *See* 47 C.F.R. § 54.201.

seek federal funding to meet the requirements of 47 U.S.C. § 214(e).¹⁵ The FCC determined that a state commission may, in the area served by a rural telephone company, “[u]pon request and consistent with the public interest, convenience, and necessity[,] . . . designate more than one common carrier as an eligible carrier” after finding the designation is in the public interest.¹⁶

A. NRS will offer services supported by federal universal service support mechanisms

In addition to any information services NRS may provide, NRS will provide the supported telecommunications services¹⁷ as a telecommunications carrier. 47 C.F.R. § 54.5. Thus, to the extent NRS is engaged in offering the supported services on a non-discriminatory basis “for a fee directly to the public, or to such classes of users to be effectively available directly to the public . . .”, NRS will be a common carrier under the Act, and eligible for designation as an ETC pursuant to 47 U.S.C. § 214(e). *Id.*

In order to receive CAF support, an ETC must offer voice telephony services, which term encompasses: “voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to emergency services provided by local government or other safety organizations, such as 911 and enhanced 911, [to the extent implemented in the area]; and toll limitation services to qualifying low-income customers”¹⁸ NRS will satisfy these requirements with its proposed voice and broadband offerings.

¹⁵ Okla. Admin. Code § 165:59-3-14(e).

¹⁶ 47 C.F.R. § 54.201(c).

¹⁷ 47 C.F.R. § 54.101.

¹⁸ 47 C.F.R. § 54.201.

B. NRS will offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services

Federal law requires an ETC to provide supported services using its own facilities and a combination of another carrier's facilities.¹⁹ Though, "a telecommunications carrier is not eligible for support if the carrier offers the supported services exclusively through the resale of another carrier's services."²⁰ NRS intends to construct its own facilities to provide supported services with its rural broadband experiment grant.

C. NRS will advertise the availability and charges for NRS's services using media of general distribution

An ETC must "advertise the availability of [the supported services it will offer] and the charges therefor using media of general distribution"²¹ NRS intends to advertise its proposed services through multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailings, public displays, and bill inserts, amongst other available mediums.

D. NRS will provide supported services in the study area of Chouteau Telephone Company d/b/a FairPoint Communications

The ability of a common carrier to operate as an ETC is limited to a "service area designated by the State commission."²² NRS seeks designation as an ETC in study area of Chouteau Telephone Company d/b/a FairPoint Communications ("Chouteau"). NRS requests the OCC not designate NRS as a carrier of last resort, unless the same is a prerequisite to granting the relief requested herein, as the FCC does not require designation as a carrier of last resort is not required under its rural broadband experiment.²³

¹⁹ 47 U.S.C. § 214(e)(1)(A).

²⁰ 47 C.F.R. § 54.201(i).

²¹ 47 U.S.C. § 214(e)(1)(B).

²² 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

²³ Federal Communications Commission, *FAQs for Rural Broadband Experiments* at § III(C).

E. Designating NRS as an ETC is in the Public Interest:

The Telecommunications Act of 1996, as amended aims “to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies.”²⁴ The Federal Communication Commission created the Connect America Fund to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation’s communications services.”²⁵ In its *Tech Transitions Order*, the FCC explained it must “ensure that all Americans benefit from the technology transitions, and that [the FCC] gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential customers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.”²⁶ Further, one of the CAF’s stated purposes is to make available “broadband . . . services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural America.”²⁷ NRS’ current request for designation as an ETC must be examined in light of the Act’s goals of securing lower prices and higher quality services for rural Oklahomans.

NRS is seeking to provide an additional competitive alternative to the services currently existing in the areas subject to this Application. NRS’ proposed offerings will promote

²⁴ *Telecommunications Act of 1996*, Pub. L., No. 104-104, 110 Stat. 56.

²⁵ *Report and Order and Further Notice of Proposed Rulemaking*, ¶ 1, FCC 14-98 (Released July 14, 2014).

²⁶ *Id.*, at ¶ 6 (quoting Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014)).

²⁷ *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, ¶ 120 (Released November 18, 2011).

competition and facilitate the provision of advanced communications services to Oklahoma residents. Factors supporting designation of NRS as an ETC include, but are not limited to: (1) increased competitive choice; (2) the unique advantages of NRS' offerings; (3) NRS' commitment to provide quality service by expanding and improving its network and facilities; (4) the supported services will be provided in a reasonable time; (5) unserved and underserved Americans will receive supported services; and (6) the positive impact on universal service.²⁸ These factors are merely amongst the reason granting this Application is in the public interest.

1. Increased Competitive Choice.

NRS will provide an additional competitive choice allowing rural Americans to realize the Act's goals of lower prices coupled with higher quality service. NRS proposes to offer broadband reaching speeds up to 1 gigabit to residential and business customers. These unique speeds, along with NRS' implementation of voice-over-internet-protocol ("VoIP") to provide supported voice telephony services, encompass a competitive alternative to currently offered services in the applicable rural study area.²⁹

Grant of NRS' application will serve the public interest by increasing the number of ETCs in Oklahoma, thus allowing more Oklahoma residents to receive the supported services, thereby increasing the USF support flowing into Oklahoma. Another ETC in these areas will increase the number of individuals connected to the public switched telephone network and/or the Internet.

2. Uniqueness Advantages of NRS' Offerings.

NRS' VoIP and broadband services will be unique in the rural telephone company study area subject to this application. Both the technology used and the speeds obtainable with this

²⁸ See e.g. *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700.

²⁹ See *Cox Oklahoma Telecom, LLC v. State ex rel. Okla. Corp. Com'n.*, 164 P.3d 150, 2007 OK 55, ¶¶ 40-47.

technology will differ from the current services provided in the rural telephone company's study area.

3. *Quality Service through Network Expansion and Improvement.*

NRS remains committed to providing expanded and improved network and facilities to facilitate the provision of quality service in the proposed areas. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services, as required by the CAF, to customers in the rural telephone company study area subject to this application.

4. *Supported Services Provided in a Reasonable Time.*

As a condition of rural broadband experiment funding, provisionally selected bidders such as NRS must commit to providing USF supported services in a reasonable time. Specifically, the rural broadband experiment requires entities offer service to at least 85 percent of supported locations within three years, and 100 percent of supported locations within five years.³⁰ Offering the supported services to 85 percent of locations within three years, and 100 percent of locations within five years, or earlier, provides for a reasonable deployment timeframe.

5. *Services Reaching Customers in Currently Underserved Areas.*

Granting this application will facilitate the provision of services to households currently unserved or underserved. The FCC established the CAF "to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; expand fixed broadband and facilitate reform of the intercarrier compensation system."³¹

³⁰ Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98, ¶ 74 (Released July 14, 2014).

³¹ Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶ 115, 116 (Released November 18, 2011).

Both study area subject to this application include census blocks eligible for funding thorough the rural broadband experiment, a subset of the CAF. As the FCC allowed bidding in these census blocks because they were underserved or unserved, the public interest favors granting this application.

6. *Positive Impact on Universal Service.*

Another ETC in Oklahoma will allow additional USF support to reach unserved or underserved Oklahoma residents, allowing for the construction of additional facilities and ultimately connecting more customers to the telecommunications network.³² In the price cap areas subject to this application, legacy universal service support has been redirected into the CAF, and thus any negative effect on customers receiving services though legacy universal support, if any, will be minimal and outweighed by the individuals who will benefit from the granting of this Application.

F. NRS will comply with all USF requirements not specifically enumerated herein

In the Technology Transitions Order³³ and the Rural Broadband Experiments Order,³⁴ as reflected in applicable regulations,³⁵ the FCC established, eliminated and modified various rules and procedures applicable to ETCs in order to craft rules for the CAF Phase II. While not specifically applicable to the statutory and regulatory prerequisites to state-based ETC designation, NRS is aware of and will comply with applicable USF requirements.³⁶

³² See *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700, 2006 WL 7357816 at *5 (August 22, 2006).

³³ See *Technology Transition Order*.

³⁴ See *Rural Broadband Experiments Order*.

³⁵ 47 C.F.R. Part 54.

³⁶ See e.g. *Rural Broadband Experiment Order* at ¶¶ 73-75 (Build Out Requirements), 82 (Certification), 85 (Record Retention).

III. LEGAL AUTHORITY

The OCC has the legal authority to grant the relief requested herein pursuant to 47 U.S.C. § 214(e); 47 C.F.R. Part 54; Art. IX, Sec. 18, *et seq.* of the Oklahoma Constitution, and Okla. Admin. Code § 165:59-3-14(e).

IV. RELIEF REQUESTED

For the reasons set forth above, and pursuant to Section 214(e) of the federal Telecommunications Act of 1934, as amended, Part 54 of the Federal Communications Commission Regulations, Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission Regulations, NRS requests that the OCC enter an Order designating NRS as an ETC, as set forth herein, eligible to receive all available support from the federal USF support mechanisms, including the CAF (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the Chouteau study area. NRS further respectfully requests that the OCC enter its Order at the earliest possible date and grant NRS such other relief as the OCC may deem proper.

DATED this 20th day of February, 2015.

Respectfully submitted,

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Attorneys for Applicant, Northeast Rural
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By:



Michael T. Torrone, OBA #21848
Nathan M. Bloomer, OBA #31944

CERTIFICATE OF MAILING

On this 20th day of February, 2015, a true and correct copy of the foregoing was mailed to:

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Nathan M. Bloomer

FEB 20 2015
FILED / RECEIVED

FEB 25 2015

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF NORTHEAST RURAL)
 SERVICES, INC. FOR DESIGNATION AS)
 AN ELIGIBLE TELECOMMUNICATIONS)
 CARRIER PURSUANT TO THE)
 TELECOMMUNICATIONS ACT OF 1996)

CAUSE NO. PUD 201 **500081**

**APPLICATION OF NORTHEAST RURAL SERVICES, INC. FOR DESIGNATION
 AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STUDY AREA OF
 CENTURYTEL OF NORTHWEST ARKANSAS, LLC D/B/A CENTURYLINK**

Northeast Rural Services, Inc. ("NRS"), by its attorneys, hereby submits this Application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, as amended ("Act"),¹ Part 54 of the Federal Communications Commission ("FCC") Regulations,² Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission ("OCC") Regulations.³ NRS requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") support mechanisms, including the Connect America Fund ("CAF") (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the geographic area specified in this Application. In support of this Application, NRS submits the following:

I. APPLICANT

On September 12, 2013, the OCC issued NRS a certificate of convenience and necessity to provide data-only telecommunications throughout the State of Oklahoma.⁴ NRS is an Oklahoma corporation providing data-only telecommunications to its customers in Oklahoma. NRS's designated representative is Sheila Allgood, P.O. Box 399, Vinita, OK 74301, (918) 256-

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. Part 54.

³ Okla. Admin. Code § 165:59-3-14(e).

⁴ OCC Order Number 615809, Cause Number 201200015

**EXHIBIT
"C"**

OKLA CORP COMM
 RECEIPT 1505740027
 Date: 02/25/2015 Time: 11:19
 Case: 201500081 PUD Cashier: LBI
 Payor: NORTHEAST RURAL SERVICES
 Check: 129224 \$100.00
 71 OIL&GAS/TRAN/PUD AFP

9441. NRS's attorneys are Logan and Lowry, LLP (Attn: Michael T. Torrone), 101 South Wilson Street, P.O. Box 558, Vinita, OK 74301, (918) 256-7511. NRS has proceedings pending before the OCC in Cause No. PUD 201400359⁵ and Cause No. PUD 201500014.⁶

II. ALLEGATION OF FACTS

NRS submitted a bid for CAF Phase II rural broadband experiment support in price cap areas to deploy new, robust broadband to potential Oklahoma consumers.⁷ The FCC awarded NRS \$1,029,274.00 to provide services in Craig, Delaware, Ottawa and Mayes counties in the State of Oklahoma. As stated in the *Tech Transition Order*,⁸ the FCC requires NRS to be designated as an ETC within ninety (90) days of the award date,⁹ subject to the FCC's ability to waive the same for good cause shown. Accordingly, NRS respectfully requests that the OCC expeditiously approve this Application for ETC designation so that NRS may utilize CAF Phase II support to provide broadband and USF supported services to rural Oklahoma.

In its *USF/ICC Transformation Order*,¹⁰ the FCC made sweeping changes to federal universal service support mechanisms. One of the most significant changes was the creation of the CAF, which the FCC created to ultimately replace all of the FCC's current high cost support mechanisms. In addition, the FCC expanded the purpose of universal service to increase the availability of broadband service to unserved and remote areas. In areas served by price cap carriers, the FCC introduced CAF support for broadband in two phases. During the first phase, legacy high cost support to price cap carriers was frozen and carriers electing to receive

⁵ Application for Eligible Telecommunications Carrier designation is certain Southwestern Bell Telephone Company d/b/a AT&T Oklahoma exchanges.

⁶ Application for expansion of authorized services under data-only Certificate of Convenience and Necessity.

⁷ See *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-98 at ¶ 1 (Adopted: July 11, 2014) ("Rural Broadband Experiment Order").

⁸ *Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, FCC 14-5 at ¶ 118 (Adopted: January 30, 2014) ("Tech Transition Order").

⁹ The applicable date for ETC designation is March 5, 2015. See *Rural Broadband Experiment Order* at ¶ 22.

¹⁰ *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (Adopted October 27, 2011).

additional funding were required to extend broadband service to additional unserved locations for every \$775 in incremental support. During Phase II, support is subject to the price cap carrier's commitment to deploy broadband on the state level, which allows the price cap carrier to receive funding based on an FCC cost model. Where the price cap carrier declines the state-level commitment, the FCC decided to implement competitive bidding in order to distribute support in a way that maximizes the extent of robust, scalable broadband service. NRS's current ETC application involves funds to be distributed under the CAF.

Universal service is a primary goal of the OCC's telecommunications policy, just as universal service is a primary aim of the FCC.¹¹ Section 214(e)(2) of the Act provides the OCC federally delegated authority to designate NRS as an ETC. Federal law requires an entity designated as an ETC to, throughout the service area which the entity is so designated, "offer the services supported by Federal universal support mechanisms under [Section 254(c) of the Act] either using its own facilities or a combination of its own facilities and resale of another carrier's services" in addition to advertising "the availability of such services and the charges therefore using media of general distribution."¹² Further, if the common carrier's proposed service territory is currently serviced by a rural telephone company, the OCC must find the ETC designation is in the public interest.¹³

The FCC has adopted minimal rules for state commission ETC designations, and these rules implement the provisions of Section 214(e) of the Act.¹⁴ In Oklahoma, the OCC echoed these requirements when adopting a rule requiring telecommunications service providers who

¹¹ Okla. Admin. Code § 165:55-17-19; *See* 47 U.S.C. § 254(b).

¹² 47 U.S.C. § 214(e)(1).

¹³ 47 U.S.C. § 214(e)(2).

¹⁴ *See* 47 C.F.R. § 54.201.

seek federal funding to meet the requirements of 47 U.S.C. § 214(e).¹⁵ The FCC determined that a state commission may, in the area served by a rural telephone company, “[u]pon request and consistent with the public interest, convenience, and necessity[,] . . . designate more than one common carrier as an eligible carrier” after finding the designation is in the public interest.¹⁶

A. NRS will offer services supported by federal universal service support mechanisms

In addition to any information services NRS may provide, NRS will provide the supported telecommunications services¹⁷ as a telecommunications carrier. 47 C.F.R. § 54.5. Thus, to the extent NRS is engaged in offering the supported services on a non-discriminatory basis “for a fee directly to the public, or to such classes of users to be effectively available directly to the public . . .”, NRS will be a common carrier under the Act, and eligible for designation as an ETC pursuant to 47 U.S.C. § 214(e). *Id.*

In order to receive CAF support, an ETC must offer voice telephony services, which term encompasses: “voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to emergency services provided by local government or other safety organizations, such as 911 and enhanced 911, [to the extent implemented in the area]; and toll limitation services to qualifying low-income customers”¹⁸ NRS will satisfy these requirements with its proposed voice and broadband offerings.

¹⁵ Okla. Admin. Code § 165:59-3-14(e).

¹⁶ 47 C.F.R. § 54.201(c).

¹⁷ 47 C.F.R. § 54.101.

¹⁸ 47 C.F.R. § 54.201.

B. NRS will offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services

Federal law requires an ETC to provide supported services using its own facilities and a combination of another carrier's facilities.¹⁹ Though, "a telecommunications carrier is not eligible for support if the carrier offers the supported services exclusively through the resale of another carrier's services."²⁰ NRS intends to construct its own facilities to provide supported services with its rural broadband experiment grant.

C. NRS will advertise the availability and charges for NRS's services using media of general distribution

An ETC must "advertise the availability of [the supported services it will offer] and the charges therefor using media of general distribution"²¹ NRS intends to advertise its proposed services through multiple mediums, which may include, but not be limited to, the Internet, newspapers, billboards, television and radio commercials, direct mailings, public displays, and bill inserts, amongst other available mediums.

D. NRS will provide supported services in the study area of CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink

The ability of a common carrier to operate as an ETC is limited to a "service area designated by the State commission."²² NRS seeks designation as an ETC in study area of CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink ("CenturyTel"). NRS requests the OCC not designate NRS as a carrier of last resort, unless the same is a prerequisite to granting the relief requested herein, as the FCC does not require designation as a carrier of last resort is not required under its rural broadband experiment.²³

¹⁹ 47 U.S.C. § 214(e)(1)(A).

²⁰ 47 C.F.R. § 54.201(i).

²¹ 47 U.S.C. § 214(e)(1)(B).

²² 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.207.

²³ Federal Communications Commission, *FAQs for Rural Broadband Experiments* at § III(C).

E. Designating NRS as an ETC is in the Public Interest:

The Telecommunications Act of 1996, as amended aims “to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies.”²⁴ The Federal Communication Commission created the Connect America Fund to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation’s communications services.”²⁵ In its *Tech Transitions Order*, the FCC explained it must “ensure that all Americans benefit from the technology transitions, and that [the FCC] gain data on the impact of technology transitions in rural areas, including Tribal lands, where residential customers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.”²⁶ Further, one of the CAF’s stated purposes is to make available “broadband . . . services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural America.”²⁷ NRS’ current request for designation as an ETC must be examined in light of the Act’s goals of securing lower prices and higher quality services for rural Oklahomans.

NRS is seeking to provide an additional competitive alternative to the services currently existing in the areas subject to this Application. NRS’ proposed offerings will promote

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Grant of NRS' application will serve the public interest by increasing the number of ETCs in Oklahoma, thus allowing more Oklahoma residents to receive the supported services, thereby increasing the USF support flowing into Oklahoma. Another ETC in these areas will increase the number of individuals connected to the public switched telephone network and/or the Internet.

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technology will differ from the current services provided in the rural telephone company's study area.

3. *Quality Service through Network Expansion and Improvement.*

NRS remains committed to providing expanded and improved network and facilities to facilitate the provision of quality service in the proposed areas. NRS has initiated construction of, and plans to continue construction of a fiber plant which will allow NRS to provide broadband along with other supported services, as required by the CAF, to customers in the rural telephone company study areas subject to this application.

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Both study areas subject to this application include census blocks eligible for funding thorough the rural broadband experiment, a subset of the CAF. As the FCC allowed bidding in these census blocks because they were underserved or unserved, the public interest favors granting this application.

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F. NRS will comply with all USF requirements not specifically enumerated herein

In the Technology Transitions Order³³ and the Rural Broadband Experiments Order,³⁴ as reflected in applicable regulations,³⁵ the FCC established, eliminated and modified various rules and procedures applicable to ETCs in order to craft rules for the CAF Phase II. While not specifically applicable to the statutory and regulatory prerequisites to state-based ETC designation, NRS is aware of and will comply with applicable USF requirements.³⁶

³² See *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700, 2006 WL 7357816 at *5 (August 22, 2006).

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³⁵ 47 C.F.R. Part 54.

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III. LEGAL AUTHORITY

The OCC has the legal authority to grant the relief requested herein pursuant to 47 U.S.C. § 214(e); 47 C.F.R. Part 54; Art. IX, Sec. 18, *et seq.* of the Oklahoma Constitution, and Okla. Admin. Code § 165:59-3-14(e).

IV. RELIEF REQUESTED

For the reasons set forth above, and pursuant to Section 214(e) of the federal Telecommunications Act of 1934, as amended, Part 54 of the Federal Communications Commission Regulations, Art. IX, Sec. 18 *et seq.* of the Oklahoma Constitution, and Section 165:59-3-14(e) of the Oklahoma Corporation Commission Regulations, NRS requests that the OCC enter an Order designating NRS as an ETC, as set forth herein, eligible to receive all available support from the federal USF support mechanisms, including the CAF (rural broadband experiment and Phase II support in price cap areas) along with support for low income customers throughout the CenturyTel study area. NRS further respectfully requests that the OCC enter its Order at the earliest possible date and grant NRS such other relief as the OCC may deem proper.

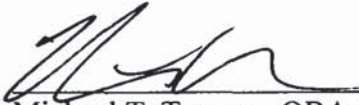
DATED this 20th day of February, 2015.

Respectfully submitted,

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Attorneys for Applicant, Northeast Rural
Services, Inc.

By:

A handwritten signature in black ink, appearing to be 'MT Torrone', written over a horizontal line.

Michael T. Torrone, OBA #21848

Nathan M. Bloomer, OBA #31944

CERTIFICATE OF MAILING

On this 20th day of February, 2015, a true and correct copy of the foregoing was mailed to:

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